IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 30866 of 2006(Y)

PETITIONER:

MOHANAN, AGED 44 YEARS,
S/O.MADHAVAN, PAMPUMKATTIL HOUSE,
EDAPALAM, PATTIKKAD P.O.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPARTMENT OF HOME AFFAIRS,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
O/O. DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. SUPERINTENDENT OF POLICE,
THRISSUR.

4. SUPERINTENDENT OF POLICE,
(CRIME BRANCH), THRISSUR.

5. SUB INSPECTOR OF POLICE,
WEST FORT POLICE STATION, THRISSUR.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 30866 of 2006 Y

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Dated this the 5th day of February, 2007

JUDGMENT

The petitioner is the defacto complainant in a crime registered under Section 435 I.P.C. According to the petitioner, no proper investigation was conducted. Report of the learned Magistrate was called for. The learned Prosecutor has been heard. The learned Prosecutor submits that in spite of the best efforts of the Investigator the offence could not be detected and a report was filed intimating the Court the conclusion that the case deserves to be referred as undetected.

2. The grievance of the petitioner is that he has not been heard before such report is accepted by the learned Magistrate. It is hence that a report of the learned Chief Judicial Magistrate was called for. The report shows that the refer report was accepted without notice to the defacto complainant as per order dt. 15.11.2005 in R.C. No. 85 of 2005.

3. Acceptance of the refer report without notice to the petitioner is certainly not proper and cannot be reckoned as valid and

justified. In these circumstances the learned counsel for the petitioner submits that acceptance of the final report may be set aside and the petitioner may be granted an opportunity to make his submissions before the learned Magistrate about the inadequacy in investigation and of the need to direct further investigation. I accept the said prayer of the learned counsel for the petitioner. The acceptance of the refer report as per order dt. 15.11.2005 in R.C. 85 of 2005 is set aside and the learned Magistrate is directed to give the petitioner an opportunity to raise his objections against the refer report submitted by the investigator.

4. This Writ Petition is accordingly allowed. The order dt.15.11.2005 in R.C. 85 of 2005 in Crime No. 338 of 2004 of Town West Police Station, Trichur is set aside. The petitioner shall appear before the learned Chief Judicial Magistrate with a copy of this judgment on 5.3.2007. After giving the petitioner an opportunity to raise his objections against the final report filed, the learned Chief Judicial Magistrate shall again consider the acceptability of the final report submitted.

(R. BASANT)
Judge

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